K 1945

File No. Non Agrs Loans II
Legal Deptt - L.

B **BRANCH**

Subject:— Rules & Notifications
under the Non-Agrs
cultivists Loans Act 1928

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Non-Agr Loans II
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Section 2 of the Non-Agriculturists' Loans Act, 1926, says "section 1 and this section extend to the whole of the Bombay Presidency. The rest of the Act may be extended by the Provincial Government by notification in the Official Gazette to any part of the Presidency from such date as may be specified in such notification." It is now proposed to issue a notification under the said section 2 extending the provisions of the rest of the Act viz. sections 3 to 6 to various specified districts which cover some of the partially excluded areas of this Province. The question is whether it is legally feasible to issue such notification in relation to the partially excluded areas or whether it is necessary to make a separate Governor's regulation under sub-section (2) of section 92 of the Government of India Act, 1935, so as to put into force the rest of the Bombay Non-Agriculturist's Loans Act in the partially excluded areas. (There is of course of question of achieving such a result by a notification under sub-section (1) of section 92 of the Government of India Act, 1935, since the Bombay Non-Agriculturists' Loans Act, 1926, is an existing Indian Law and not an Act of the Federal Legislature or of the Provincial Legislature within the meaning of the said sub-section (1) of section 92).

2. Section 292 of the Government of India Act, 1935, provides that "subject to the other provisions of this Act, all the law in force in British India immediately before the commencement of Part III of this Act shall continue in force in British India until altered or repealed or amended by a competent Legislature or other competent authority." British India includes the partially excluded areas of this Province and by the operation of the said section 292 read with section 2 of the Bombay Non-Agriculturists' Loans Act, 1926, sections 1 and 2 of the Bombay Act are already continued in force in the partially excluded areas of this Province but sections 3 to 6 of the Bombay Act are not yet in force in those areas. Nevertheless section 2 which is already in force contains the drafting device which enables a notification to issue extending sections 3 to 6 to the partially excluded areas. The question which falls to be decided is whether the use of this device in section 2 is hereafter precluded by section 292 of the Government of India Act having regard particularly to the words "subject to the other provisions of this Act" contained in that section. The other provision of the Act relevant to this question is sub-section (2) of section

92 which enables the Governor to make regulations for the peace and good government of any area in a Province which is for the time being a partial excluded area.

3. I am inclined to stretch a point and hold that sub-section (2) of section 92 and dection 292 of the Government of India Act, 1935, are no bar to resorting to the device and that a notification under section 2 of the Bombay Non-Agriculturists' Loans Act, 1928, can issue even in respectef the partially excluded areas. This would be a legical conclusion of section 2 of the Bombay Act having already come into force in the partially excluded areas. It is also significant that section 2 of the Bombay Act has not been adapted in any way so as to except the issue of a notification in respect of excluded and partially excluded areas. The issue of a Governor's regulation under section 92(2) is of course free from all legal objection. But it would mean specific legislation which needs submission to the Governor General. There are various other Acts which contain provisions similar to section 2 of the Bombay Act referred to above (see List III at page 159-of L.D. File No. G. of I.II/41) and it is therefore necessary to decide whether a simple notification under the parent Act would not be sufficient for the purpose of extension in relation to the partially excluded area. As the point is of great importance the Advocate General is requested to give his opinion.

Sd/-P.N.Moos
2-3-45

Remembrancer of Legal Affairs.

U.R to THE Advocate General, No. 1723, dated the 3rd March 1945

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ADVOCATE GENERAL'S CHAMBERS,
HIGH COURT.

Bombay, 26th March 1945.

U.R. to the Advocate General of Bombay
No. 1723, dated the 3rd March 1945.

O P I N I O N.

When the Non-Agriculturists Loans Act, 1925 was passed the provision as regards backward tracts was that acts of the Indian Legislature applied to such territory unless the Governor-General-in-Council by notification directed that it should not apply to such territory or should apply subject to such exceptions or modifications as the Governor-General-in-Council thought fit. The Governor-General-in-Council might also by notification authorise the Governor-in-Council to give similar directions as respects any act of the Local Legislature. See Section 52A(2) of the Government of India Act, 1919. Under Section 92 of the present Constitution Act any Act of the Federal Legislature or of the Provincial Legislature shall apply to an excluded area or a partially excluded are unless the Government by public notification so directs.

The question is whether notwithstanding the repeal of the Government of India Act, 1919 the Provincial Government can by notification extend the provisions of Sections 3 to 6 of the Non-Agriculturists Loan Act, 1925 to some of the partially excluded areas of the Province. The authority to issue such a notification given by that act to the Provincial Government continues in my opinion to exist-- notwithstanding the repeal of the Government of India Act, 1919. The law which will come into existence by reason of such notification derives its force from the Non-Agriculturists

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Agriculturists Loan Act. 1928. I do not see anything in the present Constitution Act to prevent the Provincial Government from issuing a notification under Section 2 of the Non-Agriculturists Loan Act. 1928. I am of opinion that such a notification will be sufficient for the purpose of extending the provisions of the Non-Agriculturists Loan Act to partially excluded areas.

sd/-

Advocate General .

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